FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Benjamin T. Barr
12519 Carrington Hill Drive
Gaithersburg, MD 20878

JUN 2 9 2017

RE: MURs 6962 and 6982

Dear Mr. Barr:

On November 17, 2015, the Federal Election Commission initially notified your clients Project Veritas, Project Veritas Action Fund, Laura Loomer, and James O'Keefe of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("that Act"). Upon further review of the allegations contained in the complaint and responses received, the Commission, on June 21, 2017, found that there is no reason to believe that Project Veritas and James O'Keefe violated the Act. The Commission also voted to dismiss the allegations that Project Veritas Action Fund and Laura Loomer violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Derek H. Ross, the attorney assigned to this matter, at (202) 694-1579.

Sincerely,

Lynn Y. Tran
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Hillary for America and Jose Villarreal in his official capacity as treasurer
Hillary Rodham Clinton
Molly Barker
Project Veritas
Project Veritas Action Fund
James O'Keefe
Laura Loomer
Unknown Respondent

MURs 6962 & 6982

I. INTRODUCTION

The Complaints relate to a Project Veritas Action Fund's[1] ("PVA") employee's purchase of campaign merchandise at a Hillary Clinton campaign rally with funds allegedly provided by a Canadian citizen. The Complaint in MUR 6962 alleges that Hillary Clinton, her authorized campaign committee, and the campaign's Director of Marketing, Molly Barker, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by soliciting and receiving a contribution from a foreign national through a conduit donor. The Complaint in MUR 6982 alleges that PVA and its President James O'Keefe violated the Act by assisting in the making of a contribution from a foreign national and by acting as a conduit for the foreign national contribution to the Committee.

[1] Project Veritas is a 501(c)(3) entity with the self-described purpose to "[i]nvestigate and expose corruption, dishonesty, self-dealing, waste, fraud, and other misconduct in both public and private institutions." *See About*, PROJECT VERITAS, http://projectveritas.com/about/ (last visited Jan. 17, 2017). The Complaint in 6982 only alleges violations of the Act by Project Veritas, O'Keefe, and Loomer. In its Response, Project Veritas argued, among other things, that it was improperly named as a Respondent, and Project Veritas Action Fund ("PVA"), a separate 501(c)(4) entity, should be substituted. Project Veritas Resp. at 1-2 (Dec. 3, 2015). PVA was then provided notice and an opportunity to respond to the Complaint. Although the entities are related, based on their representations and a full review of the available facts, it appears that PVA, not Project Veritas, is the entity involved in the activity at issue.

Based on the available information, the Commission finds no reason to believe Hillary Clinton, James O'Keefe, or Project Veritas violated the Act and exercises its prosecutorial discretion to dismiss the allegations against the remaining Respondents.

II. FACTUAL BACKGROUND

On April 12, 2015, Hillary Clinton declared her candidacy for President. Clinton designated Hillary for America as her authorized campaign committee and Jose Villarreal as its treasurer ("the Committee"). On June 13, 2015, Clinton held a campaign launch rally on Roosevelt Island in New York City. At the rally, the Committee had a booth where attendees could make campaign contributions by purchasing Hillary Clinton merchandise including hats, shirts, pins, and stickers. The booth was manned by employees of Clinton's authorized campaign committee, Hillary for America, including Compliance Manager Erin Tibe and Director of Marketing Molly Barker.

The basis of the two complaints is a YouTube video posted by PVA showing discussions between the Clinton campaign employees, a PVA employee, Laura Loomer,[2] and a self-identified Canadian citizen regarding whether foreign nationals were permitted to purchase campaign merchandise.[3] The identity of the Canadian donor is unknown.

The relevant events in the video began as Loomer stood in line to purchase Hillary Clinton merchandise and met an individual who identified herself as a Canadian national residing in Montreal.[4] As the two approached the front of the line, the Canadian national

[2] Project Veritas Action Fund Resp. (MUR 6982) at 1 (Nov. 9, 2016). Loomer was initially noticed as an unknown respondent, but was identified in PVA's Response.

[3] Complaint at note 3, citing Project Veritas Action, *HIDDEN CAM: Hillary's National Marketing Director Illegally Accepting Foreign Contribution*, YOUTUBE (Sept. 1, 2015), https://www.youtube.com/watch?v=-qxF7Z2N7Y4 [hereinafter *Video*].

[4] *Video*, *supra* note 3. Although the video is narrated by O'Keefe, this summary of events is based on the actions and statements depicted in the video and not on O'Keefe's narration.

identified herself as such to Barker.[5] Barker summoned another Committee staffer, identified in the video as Tibe, who stated that the Committee could not accept a donation from the Canadian national unless she had a U.S. Passport or Green Card.[6] Loomer then encouraged the Committee to accept the donation from the Canadian national, stating, "She drove all the way from Canada to support Hillary, you could give her, she's paying cash."[7] Tibe apologized and explained it was not the Committee's prohibition, but instead Commission rules that prohibit foreign contributions.[8]

The Canadian national next asked whether she could give the money to Loomer and have Loomer make the contribution for her.[9] Barker responded, "She [Loomer] could make a donation."[10] The Canadian national then asked Loomer, "Can you buy it for me?" Loomer agreed, responding, "Sure, I'll buy it."[11] It is not clear from the video whether Barker heard this exchange. Loomer then asked Barker, "So Canadians can't buy them, but Americans can buy it for them?"[12] Barker responded, "Not technically, you would just be making the donation."[13] At that point it appears, although the order of events is unclear from the video, that Loomer received money from the Canadian national, made the donation to the Committee in her own name in exchange for Committee merchandise, and gave some of the merchandise to the Canadian

5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.*

national. The total contribution from Loomer was $75, with $35 or $45 coming from the Canadian national.[14]

The Complaint in MUR 6962 alleges that the Committee and Barker violated the Act and Commission regulations by accepting a contribution from a known foreign national. The Committee argues that Barker made a good faith effort to comply with the law and resisted multiple requests to accept a contribution from the Canadian national, asserting that Barker was unaware of the exchange of money between Loomer and the Canadian national and therefore she could not have knowingly violated the Act.[15]

The Complaint in MUR 6982 alleges that PVA and Loomer violated the Act by soliciting or providing substantial assistance to a foreign national in the making of a contribution to the Committee from an individual she knew was a foreign national and by making a contribution in the name of another. With respect to Loomer's assistance to the Canadian national, PVA argues that it is not clear that the individual is a foreign national.[16] PVA further argues that "no action should be taken" as to the alleged violation of the prohibition against making a contribution in the name of another because the total contribution was less than $200 and therefore did not have to be reported by the Committee.[17] Finally, PVA argues that any violations on its part are *de minimis* and should be dismissed.[18] Neither Complaint alleges that Clinton or O'Keefe had any direct involvement with or personal knowledge of the transaction in question.

[14] *Id.*; Hillary for America Resp. at 1 (Nov. 5, 2015); Project Veritas Resp. at 2 (Dec. 2, 2015); Project Veritas Action Fund Resp. at 3.

[15] Hillary for America Resp. at 2-3.

[16] *Id.* at 3.

[17] Project Veritas Action Fund Resp. at 3.

[18] *Id.*

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit a foreign national from making a contribution—directly or indirectly through any other person—in connection with an election to any political office.[19] A "foreign national" is an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence.[20] A contribution is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."[21] Purchasing campaign merchandise from a committee qualifies as a contribution.[22]

Similarly, individuals are prohibited from knowingly soliciting, accepting, or receiving a contribution from a foreign national.[23] "Knowingly" is defined in the regulations, and includes having actual knowledge, being aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds are from a foreign national, or being aware of facts that would lead a reasonable person to inquire whether the funds came from a foreign national.[24]

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19 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

20 52 U.S.C. § 30121(b).

21 *Id.* § 30101(8)(A).

22 *See, e.g., Citizens' Guide*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/citizens.shtml (last visited Oct. 11, 2016) ("[I]f you pay $15 for a T-shirt sold by a campaign, your contribution amounts to $15....").

23 11 C.F.R. § 110.20(g). It is also a violation of Commission regulations to "knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt of" a foreign national contribution. *Id.* § 110.20(h).

24 *Id.* § 110.20(a)(4).

The Act and Commission regulations also prohibit making and knowingly accepting contributions in the name of another person.[25] It is a violation of Commission regulations to "[k]nowingly help or assist any person in making a contribution in the name of another."[26]

Based on a review of the footage, it appears that Loomer violated the Act by knowingly providing substantial assistance to a foreign national in making a contribution. Loomer knew the Canadian was a foreign national based on their interactions depicted in the video.[27] Loomer also knew, based on the conversation with Tibe, that the Committee was prohibited from accepting contributions from foreign nationals. Despite this knowledge, it appears Loomer accepted money from the Canadian national and used it to purchase campaign merchandise.[28] But for Loomer's assistance, the Canadian national could not have made a contribution to the Committee.

The same analysis supports finding reason to believe that Loomer violated the Act by serving as the conduit for the Canadian national's contribution. By assisting the Canadian national in the making of a contribution in the name of another person, it appears Loomer violated the Act. There is no minimum threshold for a violation of the conduit-donor prohibition.[29]

[25] 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(i), (iv).

[26] 11 C.F.R. § 110.4(b)(iii).

[27] PVA argues that it cannot be certain the individual was actually a foreign national, however, neither it nor the Committee dispute that the individual presented herself as a Canadian citizen.

[28] Although it alludes to the transaction, the video does not show Loomer and the Canadian national exchange money, leaving open the possibility that Loomer used her own money to make the contribution and gifted the merchandise to the Canadian. The Responses, however, concede that Loomer took money from the Canadian.

[29] *See* 11 C.F.R. § 110.4.

Barker and the Committee may also have violated the Act by accepting a foreign national contribution because, based on the facts available to them, a reasonable person might have inquired as to the source of the funds Loomer used to make a contribution. Although it is not clear from the video which portions, if any, of the conversation between Loomer and the Canadian national she overheard, Barker's statements and actions suggest she may have been aware of sufficient facts to satisfy the "knowingly" standard.[30] Specifically, Barker was told the Canadian national did not have a U.S. Passport or Green Card, she asked Tibe whether the Committee could accept a contribution from the Canadian national, and she was asked by Loomer whether an American could make a contribution on behalf of a foreign national. Moreover, the conversation between Loomer and the Canadian national arranging the transfer of money took place in close proximity to Barker. Based on these facts and circumstances, Barker and the Committee may have violated the prohibition against knowingly accepting foreign national contributions.

Again, the same analysis suggests that Barker and the Committee may have violated the Act by accepting a contribution in the name of another. Although it is unclear what, if anything, Barker overheard, it is possible that she accepted the contribution from Loomer with knowledge that at least a portion of it originated from the Canadian national. This would be a violation of the Act.

Finally, although not specifically discussed in either Complaint, it appears from the video that the Canadian national violated the Act by indirectly making a contribution to the Committee. Taking the individual at her word that she is a Canadian citizen, she violated the prohibition on

[30] The Committee specifically denies that Barker had any knowledge that the purchase was partially funded by the Canadian national. Hillary for America Resp. at 3.

foreign national contributions by making the contribution to the Committee by giving money to Loomer to purchase campaign merchandise on her behalf.

IV. CONCLUSION

There is no information available to suggest Clinton or O'Keefe were in any way involved with or aware of the transaction giving rise to these matters. Accordingly, the Commission finds no reason to believe that Clinton or O'Keefe violated the Act. Additionally, based on its representations that it is not the proper respondent in this matter and a full review of the available information, the Commission finds no reason to believe that Project Veritas violated the Act.

The available information indicates that the remaining Respondents violated or may have violated the Act's prohibition against making and accepting foreign national contributions and making and receiving contributions in the name of another. Nevertheless, the facts in these matters support dismissing the Complaints as a matter of prosecutorial discretion because the potential amount in violation is very small. Based on these circumstances, the Commission exercises its prosecutorial discretion and dismisses the allegations that the remaining Respondents violated the Act.[31]

[31] *See Heckler v. Chaney*, 470 U.S. 821 (1985).